

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

ERIN ALLEN, and others,  
  
Plaintiffs,  
  
v.  
  
CONAGRA FOODS, INC.,  
  
Defendant.

Case No. 13-cv-01279 VC (NC)

**ORDER REQUESTING FURTHER  
BRIEFING FROM PLAINTIFFS ON  
DISCOVERY DISPUTES**

Re: Dkt. Nos. 78, 79

Plaintiffs in this lawsuit assert that ConAgra misleadingly labeled Parkay Spray so that it could claim “0 fat” and “0 calories” per serving. The parties presently dispute the relevance of discovery about a different spray product: PAM. Plaintiffs state that PAM is a “critical reference product.” Dkt. No. 78. They seek to discover market research about PAM, communications with regulatory agencies about PAM, nature and nutrition information about PAM, and label information about PAM. The time period demanded is 1998 to present. *See* Discovery Letter Briefs, Dkt. Nos. 78, 79.

Based on the information provided, the Court is not convinced that the PAM discovery is relevant. And if relevant, does the benefit of the discovery outweigh the burden of producing it?

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1 The Court recognizes that in the first sentence of the order denying ConAgra's  
2 motion to dismiss, District Court Judge Jon S. Tigar compared Parkay Spray to PAM. Dkt.  
3 No. 41 at 1 ("Is Parkay Spray more like Pam® or liquid butter?"). But does this make all  
4 discovery about PAM for a 15-year time period relevant?

5 By 5:00 p.m. on June 16, plaintiffs must file a supplemental brief of no more than  
6 five pages explaining the relevance of the discovery they seek in letter briefs 78 and 79. No  
7 reply by ConAgra will be permitted without leave of Court. The Court's tentative view is to  
8 deny the PAM discovery requested by plaintiffs.

9 By that same deadline, plaintiffs must file a supplemental brief of no more than five  
10 pages explaining: (1) with reasonable particularity the sub-topics within "Labeling of  
11 Parkay Spray" about which they intend to question ConAgra's 30(b)(6) witness (Dkt. No.  
12 79, deposition category 6); and (2) the relevance of discovery about the Parkay Spray label  
13 before the alleged class period. Again, no reply by ConAgra will be permitted without  
14 leave of Court.

15 IT IS SO ORDERED.

16 Date: June 13, 2014



Nathanael M. Cousins  
United States Magistrate Judge